

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SAUL IRIGOYEN)	
Claimant)	
VS.)	
)	Docket No. 1,007,684
MORENO'S FRAMING COMPANY and)	
PROHASKA CONSTRUCTION COMPANY, INC.)	
Respondents)	
AND)	
)	
AMERICAN FAMILY INSURANCE COMPANY and)	
KBIWCF)	
Insurance Carriers)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

American Family Insurance Company appeals the January 6, 2003 Order of Administrative Law Judge Steven J. Howard. The insurance company disputes a finding that it is the insurer of respondent Moreno's Framing Company for workers' compensation purposes for an injury date of November 13, 2002. That is the only issue before the Appeals Board (Board) for its consideration at this time.

ISSUES

Is American Family Insurance Company the insurer of respondent Moreno's Framing Company for workers' compensation purposes for a date of accident of November 13, 2002?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds the appeal of American Family Insurance Company (American Family) should be dismissed as the Board does not have jurisdiction to consider this issue at this time.

Claimant was an employee of Moreno's Framing Company (Moreno's) on November 13, 2002. That information is uncontroverted. The dispute in this matter stems from whether American Family was providing workers' compensation insurance to Moreno's at the time of the accident. A workers' compensation coverage policy to Moreno's was issued by American Family February 21, 2000, but it lapsed September 21, 2000, for non-payment. A second policy was issued in November 2001, which was to last for a year. American Family contends that the policy lapsed for non-payment on or about June 15, 2002. The dispute concerns whether the policy had lapsed retroactive to June 15, 2002, or whether a certificate of insurance issued June 26, 2002, constituted binding notice of coverage for workers' compensation purposes.

Before that issue can be determined, the Board must first determine whether it has jurisdiction to consider this appeal from a preliminary hearing. In appeals from preliminary hearing orders, the Board does not have jurisdiction to review every alleged error in fact or in law. In preliminary hearing matters, the Board's jurisdiction is limited by K.S.A. 44-534a to the following issues, which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the worker's accidental injury arise out of and in the course of employment?
- (3) Did the worker provide the employer with timely notice of accidental injury and timely written claim?
- (4) Do certain defenses exist that will defeat the compensability of the claim?

Additionally, the Board may review preliminary hearing awards when an administrative law judge is alleged to have exceeded his or her jurisdiction in awarding the benefits requested. That authority is provided in K.S.A. 2001 Supp. 44-551(b)(2)(A) which provides, in part:

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. . . .

The dispute here deals with whether an insurance company is providing coverage. There is no dispute regarding whether claimant suffered an accidental injury or whether that injury arose out of and in the course of employment. Additionally, there are no defenses dealing with notice and timely written claim. The insurance carrier argues that

the Board has jurisdiction to determine the identity of the insurance carrier. The Board agrees. However, that determination cannot occur on appeal from a preliminary hearing.

Whether the Administrative Law Judge is right or wrong regarding the coverage, the Administrative Law Judge does have the jurisdiction at preliminary hearing to decide those questions. The Judge's jurisdiction is not limited to deciding questions rightly.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.¹

Therefore, the Board finds that American Family's appeal in this matter should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of American Family Insurance Company from the Order of Administrative Law Judge Steven J. Howard dated January 6, 2003, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of April 2003.

BOARD MEMBER

c: David J. Grummon, Attorney for Claimant
Joseph R. Ebbert, Attorney for Respondent (American Family)
Matthew S. Crowley, Attorney for Respondent (KBIWCF)
Richard H. Wagstaff, III, Attorney for the Fund
Steven J. Howard, Administrative Law Judge
Director, Division of Workers Compensation

¹ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).